



United States District Court
Western District of New York

Robert McFadden (#14-B-3670),
(Plaintiff)

-VS-

Claim No.: None

22-cv-74JLS

John T. Bradley, ESQ.

Timothy P. Donaher, ESQ.

Office of The Public Defender, (Defendants)

This is a civil action seeking relief and damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. 1983. The court has jurisdiction over the action pursuant to 28 U.S.C. 1331, 1333 (3) and (4), and 2201. Also in accordance with 42 U.S.C. 1997(e)(a).

— Plaintiff's Information —

Robert McFadden #14-B-3670

Present Place Of Confinement Address: Southport Correctional Facility
P.O. Box 2000
Pine City, New York 14871

- Defendants Information -

Name of Defendant: John T. Bradley, ESQ.

Official Position of Defendant: Public Defenders Office Attorney

Defendant IS Being Sued: In his official & Individual capacity

Address of Defendant: Office of The Public Defender

Monroe County, New York

10. N. Fitzhugh Street

Rochester, New York 14614

Name of Defendant: Timothy P. Donaher, ESQ.

Official Position of Defendant: Public Defender

Defendant IS Being Sued: In his official & Individual capacity

Address of Defendant: Office of The Public Defender

Monroe County, New York

10 N. Fitzhugh Street

Rochester, New York 14614

Name of Defendant: Office of The Public Defender

Official Position of Defendant: Representing Indigent Defendants

Defendant IS Being Sued: In its official capacity

Address of Defendant: Office of The Public Defender

Monroe County, New York

10 N. Fitzhugh Street

Rochester, New York 14614

There are NO previous lawsuits in state or federal court dealing with the same facts involved in this action. The Plaintiff has the following civil suits filed which relates to his imprisonment which are described as follows:

- ① Robert McFadden - VS. - The State of New York
Ⓐ Jurisdiction: New York State Court of Claims
Ⓑ Claim No.: 133225
Ⓒ Date The Action Was Filed: June 17TH, 2019
Ⓓ Disposition Of The Case: Still Pending Litigation

- ② Robert McFadden - VS. - The State of New York
Ⓐ Jurisdiction: New York State Court of Claims
Ⓑ Claim No.: 133437
Ⓒ Date The Action Was Filed: August 2ND, 2019
Ⓓ Disposition Of The Case: Still Pending Litigation

- ③ Robert McFadden
- VS. -

Lynn Connors, ET AL.

- Ⓐ Jurisdiction: United States District Court, Western District of New York
Ⓑ Claim No.: 19-CV-766 - LJV-LGF
Ⓒ Date The Action Was Filed: June 10TH, 2019
Ⓓ Disposition Of The Case: Pending Trial

(4) Robert McFadden - VS. - The State of New York

(A) Jurisdiction: New York State Court of Claims

(B) Claim No.: 134490

(C) Date The Action Was Filed:

(D) Disposition Of The Case: Pending Trial

(5) Robert McFadden - VS. - The State Of New York

(A) Jurisdiction: New York State Court of Claims

(B) Claim NO.: 134622

(C) Date The Action Was Filed:

(D) Disposition Of The Case: Pending Trial

(6) Robert McFadden - VS. - The State Of New York

(A) Jurisdiction: New York State Court of Claims

(B) Claim NO.: 134687

(C) Date The Action Was Filed: May 26TH, 2020

(D) Disposition Of The Case: Pending Trial

(7) Robert McFadden - VS. - William Keyser (Writ of Habeas Corpus)

(A) Jurisdiction: Western District Of New York

(B) Claim NO.: 20-CV-0746 - JLS

(C) Date The Action Was Filed: May 26TH, 2020

(D) Disposition Of The Case: Pending Decision

- (8) Robert McFadden - vs. - The State Of New York
(A) Jurisdiction: New York State Court of Claims
(B) Claim No.: 137138
(C) Date The Action Was filed: October 19th, 2021
(D) Disposition Of The Case: Pending Trial
- Complaint/Petition —

Plaintiff, Robert McFadden (#14-B-3670), alleges the following based upon personal information & belief:

① Plaintiff "McFadden" is an incarcerated individual appearing pro-se. The Plaintiff resides at the following Correctional Facility (address):
Southport Correctional Facility
P.O. Box 2000
Pine City, New York 14871

② Defendant, John T. Bradley ESQ., is an individual and an attorney, who at all times mentioned was, and still is, licensed to practice law in New York State.

③ Defendant, John T. Bradley, was at all times ~~employed~~ mentioned employed as an attorney by Defendant

Monroe County Office of The Public Defender. A government agency of the State of New York.

- ④ On or about July 10TH, 2013 the Plaintiff was arrested & arraigned on two counts of murder in the second degree N.Y. Penal Law 125.25 (1) & (3), arising out of an incident that occurred on May 15TH, 2012 in the City of Rochester New York.
- ⑤ After being arrested, Defendant, The Public Defender's office of Monroe County New York, assigned Public Defender Michael Lopez, before the Honorable John DeMarco, Monroe County Court Judge.
- ⑥ On the next court date, July 31ST, 2013 Plaintiff appeared with new assigned counsel, Matthew Lembke. The Public Defender's office was removed from the case. Effectively replaced.
- ⑦ A jury trial was conducted between September 18TH, and September 26TH, 2014. Plaintiff was found guilty of the lesser included offense of Manslaughter in the Second degree, N.Y. Penal Law 125.15.
- ⑧ On December 2ND, 2014 the Plaintiff was sentenced to aneterminate term of 7½ to 15 years imprisonment by Hon. John DeMarco, Monroe County court Judge.

- ⑨ Around or about August 2019 New York State enacted legislation through the Domestic Violence Survivors Justice Act Penal Law (60.12), allowing defendants that have a temporal nexus between abuse and offense to file a CPL 440.47 motion for resentencing reduction.
- ⑩ Eligible defendants are entitled to free representation with the right to appeal to the Appellate Division.
- ⑪ Around or about December, to February 2020 the Plaintiff began the process of obtaining representation by the Monroe County Public Defenders Office, by sending a very specific/detailed letter requesting counsel to perfect a CPL 440.47 Re-sentencing application pursuant to Penal Law (n.y.) 60.12, the Domestic Violence Survivors Justice Act. Addressed to Timothy Donaher ESQ., Defendant Number Two.
- ⑫ Defendant Donaher responded to the Plaintiff via written communication, enclosed with a questionnaire for the Plaintiff about abuse & the nexus of Domestic Violence/abuse with the instant offense/crime. Also a request for documentation/documents from

State/government agencies, i.e. police reports, pre-Sentencing Investigation Report, treatment facilities, Parole/Probation, Mental Health treatment records from the Office of Mental Health.000 etc.

- (13) Between February 2020 & June 2020 the Plaintiff maintained contact & correspondence with Defendant Timothy P. Donaher, ESQ. at the Public Defenders Office of Monroe County in the State of New York. The Plaintiff provided approximately 85 pages of government/state agencies records relevant for proof of reported abuse history.
- (14) Around or about February 2020 the Plaintiff mailed the above stated approximately 85 pages of various records to the Defendant Timothy P. Donaher ESQ. at the Monroe County Public Defenders office. After weeks (about two) of no reply, the Plaintiff made a 3-way call to the Public Defenders office to inquire about the documentation being received. At that time, the phone call was recorded over the prison phone system. Timothy Donaher stated to the Plaintiff that he never received the mail & it could've gotten lost.
- (15) The Plaintiff then mailed additional documents to the defendant Timothy Donaher on June 28TH, 2020.

- (16) Around or about August 2020, defendant Timothy Donaher contacted the Plaintiff advising him that the Public Defenders Office has assigned my case to John T. Bradley, ESQ. defendant number one.
- (17) From August 2020 to October 7, 2021 defendant John T. Bradley failed to communicate with the Plaintiff & refused to write the Plaintiff back in the regards of the re-sentencing application pursuant to CPL 440.47 & Penal Law 60.12.
- (18) It was clear or should have been clear to the Defendants throughout the course of the proceedings that the Plaintiff's re-sentencing application was premised on the domestic abuse by his wife & the nexus to the instant offense is established through the Rochester Police Department Major Crimes Unit investigative reports & the attached depositions. In that the Plaintiff provided records, & police reports & documents relevant to the Plaintiff's wife, criminal history, & temperament.
- (19) It was clear that the Plaintiff produced sufficient evidence to establish that there was a nexus between the Plaintiff's Domestic Abuse with his wife & the crimes charged for which the Plaintiff was prosecuted on.

(20) During the course of the proceedings, Defendants failed to take proper steps to obtain exculpatory evidence, in that the Defendants never communicated with the Plaintiff in the regards of nature & availability of exculpatory evidence & witnesses. The defendants totally failed to investigate or take any steps to comprehend the nature of the Plaintiff's claimed domestic violence history & the abuse inflicted upon the Plaintiff by his wife Roseanna McFadden.

(21) The Plaintiff sent many letters of inquiry addressed to John T. Bradley, Esq., to which he ignored from August 2020 to October 7TH, 2021, at which time John T. Bradley responded to the Seventh Judicial District State of New York Attorney Grievance Committees.

(22) All letters & complaints about John Bradley were addressed to John Bradley, & Timothy P. Donaher, his supervisor/boss. Timothy Donaher ignored all letters, phone calls, & voice mails.

(23) The Defendants failed to file the Plaintiff's CPL 440.47 motion for resentencing under the Domestic Violence Survivors Justice Act. Partly or totally because the Defendants John Bradley, and/or other employees of the Defendant Timothy P. Donaher and the Monroe County Public

Defenders Office did not believe that the Plaintiff was innocent or simply had other priorities than adequately and properly defending Plaintiff.

(24) The Defendants never had a domestic violence expert review the Plaintiff's discovery documents & reports relevant to the Plaintiff's wife. Instead, the Defendants focused their attention erroneously on forming a legal argument based on abusive treatment when the Plaintiff was a child. The Defendants assumed the wrong legal arguments & provided highly incorrect information to Kelly A. Pagan, an Investigator with the State of New York Attorney Grievance Committee.

(25) The Defendant John T. Bradley did not contact & notify the Plaintiff that he would not be filing an application for the Plaintiff, until October 12th, 2021, once Mr. Bradley was ~~contacted~~ contacted by the Attorney Grievance Committee.

(26) In retaliation to the Plaintiff's complaint, defendant John T. Bradley closed out the representation of the Plaintiff falsely determining there was no basis for the application due to childhood abuse. Defendant Timothy P. Donaher never responded to the Plaintiff's complaints.

(27) As a result of the failure to take the necessary steps as noted above to obtain the Plaintiff's sentence reduction & freedom, the Plaintiff remained in jail more than 12 months without the Defendants filing a motion or corresponding with the Plaintiff.

(28) Defendant John T. Bradley told the Plaintiff's fiance Khaliah Edwards that he has domestic violence expert would visit the Plaintiff around 2021 Spring or Summer. Due to this representation, Khaliah Edwards then retained counsel Michael Witmer, ESQ. for perfecting the Federal Habeas Corpus.

(29) It was clear that John Bradley falsely represented facts to Khaliah Edwards via phone call(s). Such facts are recorded on the prison phone system & the Plaintiff will seek to introduce these audio recordings at trial. Had the defendant stated to Ms. Edwards that he will not be filing an application & closing out his representation the Plaintiff could have & would have retained another counsel, or paid Michael Witmer to file the resentencing application. Now the Plaintiff remains in jail longer than he should be by at least 1 year / 12 months. Time wasted.

(30) The failure to communicate, obtain evidence & witnesses,

& the failure to investigate and file the mentioned application for re-sentencing was negligent and fell below the proper standard of care.

- (31) Accordingly, at no time throughout the proceedings was the Plaintiff afforded the constitutional requisite of Due Process.
- (32) The described acts & omissions were done or omitted by employees of the Defendant, The Monroe County Public Defenders Office, while acting on its behalf and for its benefit and within the scope of their employment & authority.
- (33) The acts & omissions of the Defendants were done while they were acting under the color of law as described above and were done with deliberate and reckless disregard of the Plaintiff's constitutional rights.
- (34) As a result of the Defendants acts & omissions, the Plaintiff has undergone severe mental trauma as well as a loss of life's enjoyment and will continue to so suffer in the future.
- (35) As a result of Defendants acts & omissions, the Plaintiff has suffered and will continue to suffer a loss of earnings and/or earning power.

- First Cause Of Action -

- (36) Plaintiff incorporates each of the above paragraphs of this Complaint as though fully set forth here.
- (37) As a direct and proximate cause of the actions and omissions of the Defendant John T. Bradley, (ESQ.), the Plaintiff was deprived of precious rights, privileges & immunities secured to him by the laws and Constitution of the United States and the State of New York, all to Plaintiff's great detriment and loss.
- (38) The actions of the Defendant John T. Bradley, ESQ., deprived Plaintiff of Equal Protection of the law and his rights & privileges and immunities under the laws and the Constitution of the United States and the State of New York, including, a violation of 42 U.S.C.A. § 1983, and particularly Plaintiff's right to be free from imprisonment and prosecution, his right to be secure and free on his person, to have access to the courts and Due Process, all to Plaintiff's financial detriment and loss.
- (39) By the described actions, the Defendant John T. Bradley, ESQ., deprived the Plaintiff of the rights secured to

Plaintiff by the Constitution of the United States, particularly the Fourth, Fifth, and Fourteenth Amendments, in violation of 42 U.S.C.A. § 1983, and the laws and Constitution of New York State.

(40) Plaintiff is entitled to recover attorney's fees and costs under 42 USC A. § 1988 and New York State statute.

-Second Cause Of Action-

(41) Paragraphs 1 through 40 are incorporated by reference as though fully set forth at length here.

(42) At all times mentioned, Defendants Timothy P. Donaher & The Monroe County Public Defender's Office negligently failed to properly supervise and monitor the conduct of Defendant John T. Bradley in his handling of the application for re-sentencing of the Plaintiff, as described above, in that Defendant Timothy P. Donaher failed to investigate the Plaintiff's complaints against John T. Bradley, failed to respond to complaints regarding John T. Bradley's lack/failure to communicate with the Plaintiff & investigate the nexus between the Plaintiff's abuse

and how it impacted the commissions of the charged offense. The Defendants mishandled the Plaintiff's documents & records & police reports. In the effect of losing/misplacing the records & reports, and the failure to make the correct nexus between such reports & the relevance of the resentencing application.

(43) The described acts & omissions of Defendants John T. Bradley, Timothy P. Donaher, & the Monroe County Public Defenders Office, deprived the Plaintiff of Equal Protection of the law with regard to Plaintiff's rights, privileges and immunities under the laws and Constitution of the United States and New York State, in particular Plaintiff's right to be free from imprisonment, oppression, and intimidation, and his right to Due Process, all to his great mental and financial detriment and loss.

(44) The described acts and omissions of Defendants John T. Bradley, Timothy P. Donaher, & The Monroe County Public Defenders Office, were committed under the color of law, all of which deprived the Plaintiff of his rights, privileges and immunities guaranteed to Plaintiff as a citizen of the United States and of New York State, and deprived the

Plaintiff of his rights guaranteed under the First, and Fourteenth Amendments of the United States Constitution and the laws and Constitution of New York State.

(45) The Improper oppressive and arbitrary acts and failures of the Defendants and its policy makers were the proximate cause of the injuries and damages suffered and incurred by Plaintiff.

(46) Plaintiff is entitled to reasonable attorney's fees, costs and expenses.

(47) The actions perpetrated on Plaintiff were so outrageous and willful that an award of punitive damages is warranted.

— Third Cause of Action —

(48) Paragraphs 1 through 47 are incorporated by reference as though fully set forth at length here.

(49) At all times mentioned, The Defendant John T. Bradley was acting on behalf of and for the benefit of Defendants Timothy P. Donaher & The Monroe County Public Defenders Office, and within the scope & course of his employment.

(50) The actions or lack of action by Defendants were done with malice and constituted willful misconduct, in that John T. Bradley failed to correspond or communicate with the Plaintiff regarding the resentencing application. That John T. Bradley falsely told Khaliah Edwards that he would be scheduling a prison visit with the Plaintiff accompanied by a psychologist and never did so. That John T. Bradley made false statements and representations to Kelly A. Page about the eligibility of the Plaintiff's case for the resentencing application when he failed to make the nexus with the Plaintiff's wife & the charged instant offenses and failed to seek clarity & understanding, and ultimately failed to file the motion prior to closing out the Plaintiff's representation for re-sentencing. The negligence of Defendant Bradley consisted of the above acts & omissions.

- Fourth Cause Of Action -

(51) The negligence of the Defendants, John T. Bradley, Timothy P. Donaher, and The Monroe County Public Defender's Office consisted of the following:

- A Defendants failed to diligently investigate Plaintiff's claim;
- B Failed to promptly file the resentencing application so that needed discovery could be obtained & evidentiary hearings held with witnesses called on behalf of the Plaintiff;

- ⑥ Failed to keep Plaintiff properly advised of the progress of his case, and in fact, misrepresented the progress of the case and improperly advised Plaintiff of the applicable statutes.
 - ⑦ Failed to initiate and conduct litigation.
- (52) As a result of the Attorney-client relationship created by the above conduct of the parties, Defendants had a duty to represent Plaintiff with the reasonable care, skill, and diligence possessed & exercised by the ordinary attorney in similar circumstances.
- (53) Defendants conduct in improperly investigating Plaintiff's case was a breach of Defendants duty to exercise reasonable care, skill, and diligence on Plaintiff's behalf. Defendants duty included the responsibility to investigate every phase of Plaintiff's case.
- (54) As a result of Defendants negligent failure to investigate Plaintiff's Domestic Violence History for re-sentencing prior to this action, the trial court never received the Plaintiff's case & the Defendants closed out Plaintiff's representation on false pretenses. Thus, Plaintiff was denied relief on the basis of his claims prematurely.

WHEREFORE, Plaintiff respectfully requests the following relief:

- ① Judgment against defendants for actual damages in an amount to be proven at trial.
- ② Damages in the amount of \$250,000.00 — Two Hundred Fifty Thousand Dollars.
- ③ Court costs; and
- ④ An attorney assigned to represent the Plaintiff in this matter.
- ⑤ Any further relief to which the Plaintiff is entitled.

Dated: January 19th, 2022

Robert McFadden #14-B-3670
Robert McFadden, Pro Se
Southport Corr. Facility
P.O. Box 2000
Prine City, New York 14871

Robert McFadden #14B3670
Southport Corr. Facility
P.O. Box 2000
Pine City, New York 14871

January 23rd, 2022



Dear Clerk of The Court,

Please file & process the enclosed
42 USC 1983 CIVIL rights complaint on my behalf.

Thank you for your time & help. Should anything else be required of me, please write me at
the above address.

Respectfully Requested,
Robert McFadden
Robert McFadden, Prose

Robert McFadden #14B3670
Southport Correctional Facility
P.O. Box 2000
Rome City, New York 14871



U.S. District Court
Western District of New York
ATTN: Clerk of The Court
100 State Street
Rochester, New York 14614